

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Amendment of Section 73.202(b))
Table of Allotments,)
FM Broadcast Stations.)
(Chatom and Grove Hill, Alabama))

MM Docket No. 97-71
RM-8920

FEB 26 11 19 AM '97
FCC MAIL SECTION 1

NOTICE OF PROPOSED RULE MAKING

Adopted: February 14, 1997

Released: February 21, 1997

Comment Date: April 14, 1997

Reply Comment Date: April 29, 1997

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed by Capital Assets, Inc. ("petitioner"), permittee of Station WFOV(FM), Channel 291C3, Chatom, Alabama,¹ requesting the reallocation of Channel 291C3 from Chatom to Grove Hill, Alabama, as the latter community's first local aural transmission service, and modification of its authorization (File No. BPH-950417MC) accordingly. Petitioner stated its intention to apply for Channel 291C3 if it is reallocated to Grove Hill, as requested.

2. Petitioner seeks to invoke the provisions of Section 1.420(i) of the Commission's Rules, which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. *See Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part* ("Change of Community MO&O"), 5 FCC Rcd 7094 (1990). In support of the proposal petitioner states that the requested reallocation of Channel 291C3 to the incorporated community of Grove Hill (population 1,551),² which is not within nor near an Urbanized Area, is mutually exclusive with its existing authorization at Chatom (population 1,094). The distance between Chatom and the petitioner's specified site at Grove Hill is 51.4 kilometers (32 miles) whereas a distance of 153 kilometers (95 miles) is

¹We note that among its other broadcast interests, petitioner is also the licensee of Stations WHOD (AM-FM), Jackson, Alabama, located 35.5 kilometers (22.1 miles) east of Chatom and 23.9 kilometers (14.8 miles) southwest of Grove Hill. Therefore, in the event this proposal is ultimately adopted, as the principal community service contour of proposed Station WFOV(FM) at Grove Hill would overlap both the Station WHOD(AM-FM) principal community service contours, petitioner will be required to apply for the facility at the application level under the duopoly provisions of Section 73.3555(a) of the Commission's Rules.

²Population figures reported herein were taken from the 1990 U.S. Census.

required in this instance.³

3. Petitioner advises that Grove Hill, the county seat of Clarke County, has its own local financial institutions, schools, library, police and municipal service systems. In further support of the proposal petitioner states that adoption of the proposal would result in a preferential arrangement of allotments consistent with the *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1992),⁴ as the reallocation would provide a first local aural transmission service to the larger community. Additionally, petitioner advises that the reallocation will enable Station WFOV(FM) to increase the degree of service within its 1 mV/m contour from its present theoretical level of 35,339 persons to 42,620 persons. Further, petitioner remarks that as Station WFOV(FM) is an unbuilt facility, no loss of existing service will result to Chatom from its proposal.

4. In light of the above, we will propose to reallocate Channel 291C3 from Chatom to Grove Hill, Alabama, and modify the authorization for Station WFOV(FM) accordingly, since it would provide a first local aural transmission service to the larger community and would enable Station WFOV(FM) to increase its potential service area.

5. As the petitioner's modification request at Grove Hill is consistent with the provisions of Section 1.420(i) of the Commission's Rules, we shall propose to modify the authorization for Station WFOV(FM) without entertaining competing expressions of interest in the use of Channel 291C3 at Grove Hill, or requiring the petitioner to demonstrate the availability of an additional equivalent channel for use by such parties.

6. Channel 291C3 can be allotted to Grove Hill, Alabama, at the petitioner's specified site, located 14.3 kilometers (8.9 miles) northeast of the community, utilizing coordinates 31-48-20 and 87-38-07, in conformity with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules.

7. In consideration of the above, we seek comments on the proposed amendments to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the communities listed below, as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Chatom, Alabama	291C3	--
Grove Hill, Alabama	--	291C3

³Coordinates at the petitioner's specified transmitter site at Grove Hill are 31-48-20 and 87-38-07. Coordinates at the authorized site for Station WFOV(FM) at Chatom are 31-35-31 and 88-07-00.

⁴The allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters (co-equal weight is given to priorities (2) and (3)).

8. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

9. Interested parties may file comments on or before April 14, 1997, and reply comments on or before April 29, 1997, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, DC 20554. Additionally, a copy of such comments should be served on the petitioner, as follows:

Capital Assets, Inc.
Attn: Bennie E. Hewett, President
311 Green Street, NE, Suite 211
Gainesville, GA 30501.

10. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b) and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

11. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service

requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

APPENDIXMM Docket No. 97-71
RM-8920

1. Pursuant to authority contained in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Center (Room 239), at its headquarters, 1919 M Street, N.W., Washington, D.C.